

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)

jperry@orrick.com

MELINDA S. RIECHERT (SBN 65504)

mrieichert@orrick.com

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 Marsh Road

Menlo Park, CA 94025-1015

Telephone: +1 650 614 7400

Facsimile: +1 650 614 7401

KATHRYN G. MANTOAN (SBN 239649)

kmantoan@orrick.com

ORRICK, HERRINGTON & SUTCLIFFE LLP

The Orrick Building

405 Howard Street

San Francisco, CA 94105-2669

Telephone: +1 415 773 5700

Facsimile: +1 415 773 5759

Attorneys for Defendant

Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO DISMISS
PLAINTIFF'S THIRD AMENDED
COMPLAINT**

[F.R.E. 201]

Dept: Courtroom 5, 17th Floor
Judge: Honorable Edward M. Chen
Date: May 16, 2024
Time: 1:30 p.m.

1 KATE E. JUVINALL (SBN 315659)
2 kjuvinall@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 631 Wilshire Blvd., Suite 2-C
5 Santa Monica, CA 90401
6 Telephone: +1 310 633 2800
7 Facsimile: +1 310 633 2849

8 RYAN D. BOOMS (SBN 329430)
9 rbooms@orrick.com
10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 2100 Pennsylvania Avenue NW
12 Washington, D.C. 20037
13 Telephone: +1 202 339 8400
14 Facsimile: +1 202 339 8500

15 Attorneys for Defendant
16 Apple Inc.
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to Federal Rule of Evidence 201, Defendant Apple Inc. requests that in connection with all its Motion to Dismiss Plaintiff's Third Amended Complaint ("TAC"), the Court take judicial notice of the following documents:

Exhibit A: Plaintiff's SEC Submission No. 16304-612-987-465 ("SEC Submission"), which Plaintiff previously submitted to the Court in connection with her Request for Judicial Notice (*see* Dkt. 35-7 at 3-21); and

Exhibit B: Plaintiff's offer of employment from Apple (the "Offer Letter").

On an FRCP 12(b)(6) motion, courts may consider documents on which the complaint "necessarily relies" if: "(1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the [document]." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *see also Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) ("[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss[.]"); *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 & n.4 (9th Cir. 1998) (holding that documents which are not mentioned in the complaint, but whose authenticity is not contested and upon which the plaintiff's complaint necessarily relies, may be considered on a motion to dismiss without converting it into a motion for summary judgment). The court is permitted to treat such documents as "part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

Here, Plaintiff directly and indirectly references Exhibits A and B, or the contents thereof, in the TAC. *See* TAC ¶¶85-86, 169-70, 172 (SEC Submission); *id.* ¶¶234-37 (Offer Letter). Because Exhibits A and B are referred to in the TAC, their authenticity is not disputed, and Plaintiff's TAC necessarily relies on them (by virtue of basing certain allegations on them), she has incorporated them by reference and the Court should take judicial notice of them. *See Juster v. Workday, Inc.*, 2022 WL 3030530, at *1 n.1 (N.D. Cal. Aug. 1, 2022) (on motion to dismiss, taking judicial notice of offer letter that was incorporated by reference); *Ansell v. Laikin*, 2011 WL 3274019, at *3 (C.D. Cal. Aug. 1, 2011) (on motion to dismiss, taking judicial notice of SEC

1 complaint that was incorporated by reference).

2 For the foregoing reasons, Apple respectfully requests that the Court take judicial notice of
3 Exhibits A and B hereto.

4
5 Dated: March 26, 2024

By: 

JESSICA R. PERRY
Attorneys for Defendant Apple Inc.